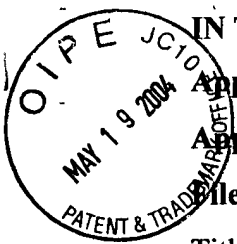


#36



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants : **Haupt et al.**
Appl. No. : **09/090,035**
Filed : **06/10/1998**
Title : **Changer Apparatus for Information Discs**
Art Unit : **2153**
Examiner : **T. Kupstas**
Dkt.No. : **PHD 97-074A**

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APPELLANTS' SUPPLEMENTAL REPLY BRIEF UNDER 37 CFR §1.193(a)

6/17/04
This Supplemental Reply Brief is submitted in response to the Examiner's Answer mailed March 17, 2004 in order to address the issues raised therein.

The Examiner states that claims 1, 3-12 and 21 are rejected under the provisions of 35 U.S.C. §103(a) as being obvious over US Patent No. 5,864,532 to *Nakamichi et al.* in view of GB 03914424 to *Umesaki*.

Grounds of Rejection

The grounds of rejection that are argued within the Examiner's Answer state that *Nakamichi et al.* disclose all the recited elements of the appealed claims except for the transporting of the disc along a curved loading path. The Examiner has taken the position that *Umesaki* teaches a curved loading path and that it would have been obvious for a person of ordinary skill within the art to implement the subject matter defined by the appealed claims by replacing the linear, planar loading path taught by *Nakamichi et al.* with the pivoting, three dimensional loading path described by *Umesaki*.

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Claim 1:

In response to the Appellants' assertion that *Umesaki* does not teach, or suggest, the subject matter for a "curve-shaped loading path" as defined by appealed claim 1, the Examiner's Answer states that *Umesaki* discloses a curved shape path for transporting discs in Figures 3, 6 and 7 of *Umesaki* (see Examiner's Answer page 2). The Appellant would like to respectfully point out that *Umesaki* teaches a curved shaped path as discussed on column 6, line 57 to column 7, line 41 of *Umesaki*. The Appellant would further like to point out that the curved shape of the loading path taught by *Umesaki* is not equivalent to the curved shaped loading path defined by the appealed claims. *Umesaki* teaches a pivoting operation with pivoting shaft 4C acting as the center and CD 13 remaining grasped by rollers 4a and 4b (see column 7, lines 3-4). After the pivoting operation, CD 13 is in the engagement position (see *Umesaki* column 7, lines 32-37). The "curved loading path" that is recited by appealed claim 1 is defined on page 1 to the specification for the present invention and was argued in the Appellants' Supplemental Brief filed on February 5, 2005, as requiring a linear loading path that extends obliquely to the front side of the changer apparatus. Neither, *Umesaki* nor *Nakamichi et al.*, teach or suggest a linear loading path that extends obliquely to the front side of the changer apparatus. Note that the Examiner's Answer has failed to address the arguments presented in the Appellants' Supplemental Brief filed on February 5, 2005 regarding the curved shaped loading path defined by the appealed claims.

The Appellants respectfully assert that the rejection of appealed claim 1 has clearly omitted the definition of a "curve-shaped loading path" as given on page 1, lines 22-27 of Appellants' specification: "A curve-shaped loading path is to be understood to mean that the loading path extends non-orthogonally with respect to the front side of the changer apparatus and, consequently, that between the eject position and the loading position the information discs perform a lateral relative movement parallel to the front side of the changer apparatus. Thus, a curve-shaped loading path also includes a linear loading path which extends obliquely with respect to the front side of the changer apparatus". In omitting the foregoing definition the rejection of appealed claim 1 has denied the Appellants' of their right to be their own lexicographers. The MPEP at §2173 clearly states that applicants are their own lexicographers and can define in the "claims what they regard as their invention essentially in whatever terms they choose so long as the terms are not used in ways that are contrary to accepted meanings in the art." Additionally, the courts have held that during patent examination, the pending claims

must be given the broadest reasonable interpretation consistent with the specification. *In re Morris*, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). Moreover, the courts have specifically held that when the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning, in order to achieve a complete exploration of the applicant's invention and its relation to the prior art. *In re Zletz*, 893 F.2d 319, 13 USPQ2d 1320 (Fed. Cir. 1989). The Appellants' specification has provided a clear definition for the term a "curve-shaped loading path" as given on page 1, lines 22-27 and the rejection of the appealed claims, specifically appealed claim 1, has ignored this clear definition. Neither *Umesaki* nor *Nakamichi et al.*, teach or suggest a linear loading path that extends obliquely to the front side of the changer apparatus. Accordingly, since claim 1 requires a "curve-shaped loading path" and the rejection has not persuasively showed that either *Umesaki* or *Nakamichi et al.*, teach or suggest a "curve-shaped loading path" as that termed should be applied, the Appellants assert that the rejection of claim 1 has not established a *prima facie* case of obviousness and should be reversed.

The Appellants would like to respectfully point out that the Examiner's Answer has failed to address the arguments presented in the Appellants' Supplemental Brief filed on February 5, 2005 regarding the second and third reasons why the rejection of appealed claim 1 has failed to provide a *prima facie* case of obviousness. The Appellants respectfully assert that the rejection has not established a *prima facie* case of obviousness in relation to appealed claim 1 for the second and third reasons presented in the Appellants' Supplemental Brief filed on February 5, 2005. Accordingly, the rejection of claim 1 should be reversed.

Claim 3:

The Appellants would like to respectfully point out that the Examiner's Answer has failed to address the arguments presented in the Appellants' Supplemental Brief filed on February 5, 2005 regarding appealed claim 3. In addition, Appellants maintain that the Office Action mailed December 19, 2003 does not present an argument addressing the following feature of claim 3: "wherein the play position is offset from a direct connecting line between the loading position and the eject position". The Appellants respectfully assert that appealed claim 3 is allowable for the reasons presented in the Appellants' Supplemental Brief filed on February 5, 2005. Accordingly, the rejection of claim 3 should be reversed.

Claim 4

The argument provided in the Examiner's Answer is based the assumption that element P2 in *Nakamach et al.* is a on the loading path. *Nakamach et al.* do not identify with specificity the location of element P2 with respect to the loading path. *Nakamach et al.* do not teach a play position disposed along a curved loading path as recited by appealed claim 4. Accordingly, the rejection of claim 4 is not persuasive and should be reversed. Alternatively, claim 4 depends from claim 1, which as argued *supra*, is believed to be allowable, therefore, the rejection to claim 4 should be reversed.

Claim 5

The Examiner's Answer argues that *Nakamach et al.* teach the transport means recited by appealed claim 5. In Reply to the Examiner's Answer, Appellants respectfully assert that *Nakamach et al.* do not teach or suggest a disc transport mechanism that transports discs along a curved path. Accordingly, the rejection of claim 5 should be reversed.

Claim 6

The Examiner's Answer assert that that elements 7 and 15 in Figure 3 of *Nakamach et al.* are transport wheels. The Appellants respectfully point out that elements 7 and 15 in Figure 3 of *Nakamach et al.* are timing pulleys and not transport wheels (see column7, lines51-64 of *Nakamach et al.*). Accordingly, the device of *Nakamach et al.* does not operate in the manner asserted by the Examiner inasmuch as *Nakamach et al.* do not employ the transport wheel recites by appealed claim 6. Moreover, claim 6 requires that the transport wheel to drive the disc along a curved loading path due to the indirect dependence of appealed claim 6 upon appealed claim 1. Accordingly, the argument provides by the Examiner's Answer in support of the rejection of appealed claim 6 is not persuasive.

Claim 7

The Examiner's Answer does not address the arguments provided in the Appellants' Supplemental Brief filed on February 5, 2005 regarding appealed claim 7. Therefore, the Appellants respectfully assert, as stated in the Appellants' Supplemental Brief filed, that *Nakamach et al.* do not disclose or suggest guides, which are preloaded towards the loading path.

Additionally, Appellants note that no arguments were provided in the Office Action dated December 19, 2002 to support the rejection of claim 7. Therefore, any argument that was presented in the Examiner's Answer relating to appealed claim 7 would have constituted a new ground for rejection which is not permitted. Currently, there are no arguments present in support of the rejection of appealed claim 7, therefore, this rejection can not stand. Accordingly, Appellants assert that the Examiner has not established a *prima facie* case of obviousness in relation to appealed claim 7, and the rejection of claim 7 should be reversed.

Claim 8

The Examiner's Answer does not address the arguments provided in the Appellants' Supplemental Brief filed on February 5, 2005 regarding appealed claim 8. Therefore, the Appellants respectfully assert, as stated in the Appellants' Supplemental Brief filed, that the combination of *Umesaki* with *Nakamach et al.* do not disclose or suggest "the first and third guide mount on a common pivot" as recited by appealed claim 8.

Additionally, Appellants note that no arguments were provided in the Office Action dated December 19, 2002 to support the rejection of claim 8. Therefore, any argument that was presented in the Examiner's Answer relating to appealed claim 8 would have constituted a new ground for rejection which is not permitted. Currently, there are no arguments present in support of the rejection of appealed claim 8, therefore, this rejection can not stand. Accordingly, Appellants assert that the Examiner has not established a *prima facie* case of obviousness in relation to appealed claim 8, and the rejection of claim 8 should be reversed.

Claim 9

The Examiner's Answer alleges that *Nakamach et al.* disclose that the read/write unit is movably supported on the chassis plate. The Applicants assert that the read/write unit is not directly mounted on the chassis plate, and that several intermediate objects exist between the plate and the unit. The Examiner contends that the claim does not require the mounting of the read/write unit directly on the plate, and indeed such a mounting would be unwise due to vibrations. The Examiner maintains that the limitation of this claim is met as nothing precludes the existence of mechanisms that make the journey of the unit safer."

In Reply to the Examiner's Answer, Appellants contend that *Nakamichi et al.* disclose an optical mechanism 1006 which resides in vertical transport mechanism 1007. Vertical transport

mechanism 1007 is in turn mounted in sliding plate 75 of damper lock mechanism 1008. Damper lock mechanism 1008 is then mounted on chassis 90. Appellants note that the optical mechanism 1006 is not mounted on the chassis 90, but is instead isolated from the chassis 90 via several intermediate structures, such as, *inter alia*, the sliding plate 75 and the damper lock mechanism 1008 (see col. 13, line 61 to col. 14, line 15; and Figures 9 and 10 of *Nakamichi et al.*). Accordingly, the Examiner's rejection of claim 9 is not persuasive and should be reversed.

Claim 10

The Examiner's Answer alleges that *Nakamichi et al.* disclose a read/write unit (1006) including a base plate and a laser mounting plate coupled by dampeners being slideably mounted on the chassis. In Reply to the Examiner's Answer, Appellants assert that *Nakamichi et al.* teach a optical pick up directly mounted on the chassis and this combined structure is mounted on the base via dampeners. Appellants respectfully submit that appealed claim 10 recites patentable subject matter over the combination of *Umesaki* and *Nakamichi et al.* Accordingly, the rejection of claim 10 should be reversed.

Claim 11

The Examiner's Answer asserts that *Nakamichi et al.* disclose a read/write unit that is moveable into play position in the vertical direction. The Appellants disagree with this position. *Nakamichi et al.* do not disclose or suggest a read/write unit that is moveable into play position in the vertical direction. Alternatively, claim 11 is allowable because it depends from claim 1, argued *supra*.

Claim 12

The Examiner's Answer alleges in the Response to arguments section that the combination of *Nakamichi* with *Umesaki* provides the controlling guide arms and that the movement away from the disk during play is a necessary function in order for the disk player to function. In Reply to the Examiner's Answer, Appellants make reference to Appellants' Supplemental Brief filed on February 5, 2005 in relation to claim 12. Neither *Nakamichi* nor *Umesaki* alone or in combination, teach or suggest, the pivoting the multiple guides away from the disc and controlled by the base plate or a sliding plate. Accordingly, the rejection to claim 12 should be reversed.

Claim 20

The Examiner's Answer takes official notice that it is well known to create the device of invention that has a depth 1.5 times the disc diameter. However, the Examiner has provided no prior art to substantiate this allegation. The Appellants submit that this rejection should be reversed.

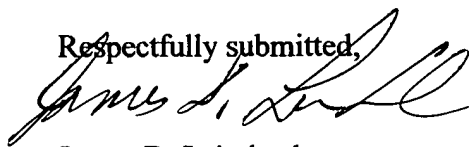
Claim 21

The Appellants assert that claim 21 is allowable for the reason argued *supra* regarding claim 1. Additionally, *Nakamichi* in view of *Umesaki* does not teach or suggest the following feature of claim 21 "the discs can be immediately transported from the eject position to the play position without going through the loading position." The Examiner did not address said feature of claim 20 in the Office Action dated December 19, 2002, Appellants contend that the Examiner has not established a *prima facie* case of obviousness in relation to claim 21, and the rejection of claim 21 should accordingly be reversed.

Summary

In summary, based on the arguments herein and in Appellants' Supplemental Appeal Brief, Appellants respectfully request that the rejection of claims 1, 3-12, 20, and 21 be reversed.

Respectfully submitted,



James D. Leimbach
Attorney For Appellants
Registration No. 34,374

Dated:

May 17, 2004

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**TRANSMITTAL
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Application Number 09/090,035

Filing Date 06/10/1998

First Named Inventor Martin Haupt

Art Unit 2153

Examiner Name Dug C. Dinh

Attorney Docket Number PHD97-074

Total Number of Pages in This Submission 10

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Remarks

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☒ Applicant claims small entity status. See 37 CFR 1.27**TOTAL AMOUNT OF PAYMENT** (\$) 330.00**Complete if Known**

Application Number	09/090,035
Filing Date	06/10/1998
First Named Inventor	Martin Haupt
Examiner Name	Dung C. Dinh
Art Unit	2153
Attorney Docket No.	PHD97-074

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Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1001	770	2001	385	Utility filing fee	
1002	340	2002	170	Design filing fee	
1003	530	2003	265	Plant filing fee	
1004	770	2004	385	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	
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2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

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Independent Claims -3** = X =

Multiple Dependent =

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Fee Code	Fee (\$)	Fee Code	Fee (\$)		
1202	18	2202	9	Claims in excess of 20	
1201	86	2201	43	Independent claims in excess of 3	
1203	290	2203	145	Multiple dependent claim, if not paid	
1204	86	2204	43	** Reissue independent claims over original patent	
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent	
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Large Entity | Small Entity

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1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	420	2252	210	Extension for reply within second month	
1253	950	2253	475	Extension for reply within third month	
1254	1,480	2254	740	Extension for reply within fourth month	
1255	2,010	2255	1,005	Extension for reply within fifth month	
1401	330	2401	165	Notice of Appeal	
1402	330	2402	165	Filing a brief in support of an appeal	330
1403	290	2403	145	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,330	2453	665	Petition to revive - unintentional	
1501	1,330	2501	665	Utility issue fee (or reissue)	
1502	480	2502	240	Design issue fee	
1503	640	2503	320	Plant issue fee	
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8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	770	2809	385	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	770	2810	385	For each additional invention to be examined (37 CFR 1.129(b))	
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(Complete if applicable)

Name (Print/Type)	James D. Leimbach	Registration No. (Attorney/Agent)	34,374	Telephone	585 381 9983
Signature	<i>James D. Leimbach</i>	Date	May 17, 2004		

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